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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,778	12/20/2001	Paul J. Klock	W0543/7052 KDW	9598

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11/04/2004

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EXAMINER

SMALLEY, JAMES N

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/027,778

Applicant(s)

KLOCK ET AL.

Examiner

James N Smalley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-8,10-12 and 14-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-8,10-12 and 14-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06 August 2004 has been entered.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the outer edge of the cover fitting against the sealing ridge, as claimed in claims 34 and 37 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

3. The drawings are objected to because the center portion (66) of the top, claimed in claim 1 as being higher than the portion outward of the concave ridge, is shown equal to the height of the portion outward of the ridge, in fig. 5. It is unclear how this portion can be equal. Examiner acknowledges the claimed structure is shown in fig. 3.

4. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be

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labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1 and 3-8, 10-12, 14-16, 34 and 36-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, from which claims 3-8, 10-12 and 14-16 depend, the limitation "*such that a portion of the upper surface adjacent the outer edge is lower than the upper surface that is disposed inwardly of the portion adjacent the outer edge,*" is unclear because it is not true for points located immediately adjacent the outer edge. Referring to fig. 5 in the instant drawings, a point taken immediately adjacent the outer edge – and thus being on the radially outward portion of the concave portion – is actually above any portion located inward from the point, taken from the point until the base of the concave portion, thus rendering the limitation not true for all points adjacent the outer edge, and unclear.

In claim 34, from which claims 36-37 depend, it is unclear how the outer edge of the cover can fit against the ridge. Examiner notes the Specification and Drawings define the ridge as element (52). The outer edge of the cover does not fit against the ridge, but instead fits against the inner portion of the sidewall.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 17 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Alden US 589,151.

Alden '151 teaches a closure for jars, comprising a container, and cover whereby the outer edge extends only to, and fits adjacent, a portion of the inner surface of the sidewall and whereby the outer edge of the cover is angled upwardly from the base.

9. Claim 35 rejected under 35 U.S.C. 102(b) as being anticipated by Ito US 4,625,887.

Ito '887 teaches a cover having an opening (4), stopper (8) and handle (7) combination with the stopper movable between an open and closed position to close the opening, container including a horizontally extending portion (3), whereby the cover extends to the inner surface of the sidewall and the stopper causes an air-tight seal in the closed position.

10. Claims 17, 27-31 and 36-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Ogino US 6,685,046.

Regarding claim 17, the seal (42) of Ogino '046 comprises "an outer edge" and is angled upward, as best seen in fig. 1.

Regarding claims 36-37, and to the degree that the Applicant's outer edge fits against the ridge, the outer edge (17) of Ogino '046 equally fits against ridge (10).

11. Claim 17 is rejected under 35 U.S.C. 102(b) as being anticipated by Schremmer US 4,303,171.

Schremmer '171 teaches a cover and a containing portion, wherein the outer edge (5) of the cover extends only to the inner surface of the sidewall, and is angled upwardly away from the base.

12. Claim 36 is rejected under 35 U.S.C. 102(b) as being anticipated by Toole US 6,307,193.

Toole '193, fig. 3, teaches a cover (12) whereby the outer edge is adapted to fit against the container ridge (26).

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Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 1, 10-12 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Molo US 5,363,978 in view of Chen US 6,196,404.

Molo '978 does not teach a concave portion adjacent the outer edge, whereby the portion of the upper surface adjacent the outer edge is lower than the portion inward of the concave portion.

Chen '404 teaches a domed sealing lid for food containers. One having ordinary skill will recognize that a domed lid affords a greater volume for containing food. Examiner notes col. 4, lines 37-38 wherein it is disclosed the container may be "circular configuration." It would be desirable to modify Molo '978 to provide greater food storage volume.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container closure of Molo '978, raising the lid top wall above the sealing rim, as taught by Chen '404, motivated by the benefit of providing increased sealing volume within the container.

15. Claims 1, 3-8, 10-12 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams US 1,842,226 in view of Molo US 5,363,978.

Williams '226 teaches a cover with a concave portion adjacent the outer edge such that a portion of the upper surface adjacent the outer edge (chosen by the Examiner to be the nadir of the portion) is lower than the portion of the upper surface disposed radially inwardly of the portion, and having a sealing ring (11) mounted to a flange (8) on the outer periphery of the bottom surface of the body portion of the cover.

Williams '226 does not disclose an opening with a stopper movable between open and closed positions, or a handle.

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Molo '978 discloses an opening and stopper for venting a vacuum within the container to aid in removal of the cover.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container cover of Williams '226, providing the opening and stopper of Molo '978, motivated by the benefit of providing a means to vent a vacuum within the container.

16. Claims 18-26 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alden US 589,151 as applied above under 35 USC 102(b) to claim 17, in view of Williams US 1,842,226.

Alden '151 teaches a closure for jars, comprising a container, and cover whereby the outer edge extends only to, and fits adjacent, a portion of the inner surface of the sidewall and whereby the outer edge of the cover is angled upwardly from the base.

Alden '151 does not teach sealing ring mounted on the outer periphery of the bottom surface of the body portion of the cover, although the reference does disclose a sealing ring (4) disposed on the container.

Williams '226 teaches a sealing ring (11) mounted to a flange (8) on the outer periphery of the bottom surface of the body portion of the cover.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container system of Alden '151, providing the sealing gasket on the cover as taught by Williams '226, because the modification is a mere change in the location of parts. It has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Furthermore, Examiner takes Official Notice it would have been obvious to one having ordinary skill to mount the sealing ring using adhesives, removably friction fit, or any other suitable means.

17. Claims 18-26 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alden US 589,151 as applied above under 35 USC 102(b) to claim 17, in view of Molo US 5,363,978.

Alden '151 does not teach an opening in the cover, or a stopper movable between an open and closed position.

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Molo '978 discloses an opening and stopper for venting a vacuum within the container to aid in removal of the cover.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container cover of Alden '151, providing the opening and stopper of Molo '978, motivated by the benefit of providing a means to vent a vacuum within the container.

18. Claims 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alden US 589,151 in view of Molo US 5,363,978 as applied above under 35 USC 102(b) to claim 31, in further view of Williams US 1,842,226.

Alden '151, as modified, does not disclose a sealing flange and sealing ring.

Williams '226 teaches a sealing ring mounted to a flange on the outer periphery of the bottom surface of the body portion of the cover.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container system of Alden '151, providing the sealing gasket on the cover as taught by Williams '226, because the modification is a mere change in the location of parts. It has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Response to Arguments

19. Applicant's arguments filed 06 August 2004 been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US Des. 26,706


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (703) 605-4670. The examiner can normally be reached on M-Th 9-7:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns


NATHAN J. NEWHOUSE
PRIMARY EXAMINER
11/1/04